

Andrea Darrow Smith, Esq. (SBN: 265237)
andrea@westcoastlitigation.com

Joshua B. Swigart, Esq. (SBN: 225557)
josh@westcoastlitigation.com

Hyde & Swigart

4129 Main Street, Suite B8
Riverside, CA 92501
(951) 784-7770
(619) 297-1022

Attorneys for Melinda Ancrum

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

<p>Melinda Ancrum</p> <p>Plaintiff,</p> <p>v.</p> <p>Legal Recovery Law Offices, Inc.; Capital One Bank (USA) N.A.</p> <p>Defendants.</p>	<p>Case No: '12CV0880 W MDD</p> <p>Complaint For Damages</p> <p>Jury Trial Demanded</p>
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INTRODUCTION

1. The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy. Congress wrote the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter “FDCPA”), to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt

1 collection practices are not competitively disadvantaged, and to promote
2 consistent State action to protect consumers against debt collection abuses.

3 2. The California legislature has determined that the banking and credit system
4 and grantors of credit to consumers are dependent upon the collection of just
5 and owing debts and that unfair or deceptive collection practices undermine
6 the public confidence that is essential to the continued functioning of the
7 banking and credit system and sound extensions of credit to consumers. The
8 Legislature has further determined that there is a need to ensure that debt
9 collectors exercise this responsibility with fairness, honesty and due regard
10 for the debtor's rights and that debt collectors must be prohibited from
11 engaging in unfair or deceptive acts or practices.

12 3. Melinda Ancrum, ("Plaintiff"), through Plaintiff's attorneys, brings this action
13 to challenge the actions of Legal Recovery Law Offices, Inc. ("LRLO");
14 Capital One Bank (USA) N.A. ("Capital One"), (collectively "Defendants"),
15 with regard to attempts by Defendants to unlawfully and abusively collect a
16 debt allegedly owed by Plaintiff, and this conduct caused Plaintiff damages.

17 4. Plaintiff makes these allegations on information and belief, with the exception
18 of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which
19 Plaintiff alleges on personal knowledge.

20 5. While many violations are described below with specificity, this Complaint
21 alleges violations of the statutes cited in their entirety.

22 6. Unless otherwise stated, all the conduct engaged in by Defendants took place
23 in California.

24 7. Any violations by Defendants were knowing, willful, and intentional, and
25 Defendants did not maintain procedures reasonably adapted to avoid any such
26 violation.

27 8. Any and all violations alleged against LRLO are imputed to Capital One
28 under the theory of vicarious liability, because the actions undertaken by

Defendant LRLO were an attempt to collect the alleged debt by an attorney's office on behalf of Defendant Capital One.

9. All violations alleged under the FDCPA are alleged as to Defendant LRLO.

10. All violations alleged under the Rosenthal Act are alleged as to all named Defendants.

JURISDICTION AND VENUE

11. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. § 1692(k), and 28 U.S.C. § 1367 for supplemental state claims.

12. This action arises out of Defendants' violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA") and the Rosenthal Fair Debt Collection Practices Act, California Civil Code §§ 1788-1788.32 ("Rosenthal Act").

13. Because Defendants do business within the State of California, personal jurisdiction is established.

14. Venue is proper pursuant to 28 U.S.C. § 1391.

15. Venue is proper pursuant to 28 U.S.C. § 1391(b) and (c).

16. Defendant commonly conduct business in San Diego County and are subject to personal jurisdiction in San Diego County, therefore Defendant resides in this judicial district pursuant to 28 U.S.C. § 1391(c).

17. At all times relevant, Defendants conducted business within the State of California.

PARTIES

18. Plaintiff is a natural person who resides in the State of California.

19. Defendant LRLO is located in the in the State of California.

20. Defendant Capital One is located in the State of Virginia.

21. Plaintiff is obligated or allegedly obligated to pay a debt, and is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

22. Defendants are persons who use an instrumentality of interstate commerce or the mails in a business the principal purpose of which is the collection of debts, or who regularly collect or attempt to collect, directly or indirectly, debts owed or due or asserted to be owed or due another and are therefore debt collectors as that phrase is defined by 15 U.S.C. § 1692a(6).

23. Plaintiff is a natural person from whom a debt collector sought to collect a consumer debt which was due and owing or alleged to be due and owing from Plaintiff, and is a “debtor” as that term is defined by California Civil Code § 1788.2(h).

24. Defendants, in the ordinary course of business, regularly, on behalf of themselves, or others, engage in debt collection as that term is defined by California Civil Code § 1788.2(b), are therefore debt collectors as that term is defined by California Civil Code § 1788.2(c).

25. This case involves money, property or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction. As such, this action arises out of a consumer debt and “consumer credit” as those terms are defined by Cal. Civ. Code § 1788.2(f).

FACTUAL ALLEGATIONS

26. Sometime before March 2011, Plaintiff is alleged to have incurred certain financial obligations.

27. These financial obligations were primarily for personal, family or household purposes and are therefore a “debt” as that term is defined by 15 U.S.C. §1692a(5).

28. These alleged obligations were money, property, or their equivalent, which is due or owing, or alleged to be due or owing, from a natural person to another person and are therefore a “debt” as that term is defined by California Civil Code §1788.2(d), and a “consumer debt” as that term is defined by California Civil Code §1788.2(f).

29. Sometime thereafter, but before March 2011, Plaintiff allegedly fell behind in the payments allegedly owed on the alleged debt. Plaintiff currently takes no position as to the validity of this alleged debt.

30. Subsequently, but before March 2011, the alleged debt was assigned, placed, or otherwise transferred, to Defendants for collection.

31. On or about early March 2011, Defendant LRLO, acting on behalf of its client Capital One, telephoned Plaintiff at her place of employment.

32. This communication to Plaintiff was a “communication” as that term is defined by 15 U.S.C. § 1692a(2), and an “initial communication” consistent with 15 U.S.C. § 1692g(a).

33. This communication was a “debt collection” as Cal. Civ. Code 1788.2(b) defines that phrase, and an “initial communication” consistent with Cal. Civ. Code § 1812.700(b).

34. Defendant LRLO telephoned Plaintiff at her place of employment several times during the month of March 2011.

35. When Defendant LRLO telephoned Plaintiff’s work, Plaintiff’s receptionist answered the call.

36. Each time Plaintiff’s receptionist answered LRLO’s calls she picked up the phone and stated: “This is the Crisis Walking Center, how may I help you?”

37. Plaintiff’s receptionist informed Defendant LRLO during each call that Plaintiff was unavailable and that this was her work number and that LRLO should call Plaintiff on her personal number instead of at work.

38. During April 2011 Defendant LRLO continued to place calls to Plaintiff’s work despite being advised by the receptionist to call Plaintiff on her personal number.

39. Throughout the month of April 2011, LRLO placed multiple calls to Plaintiff’s work and disclosed to both Plaintiff’s receptionist and another

1 coworker that LRLO was calling for Plaintiff because she owed money to
2 Capital One.

3 40. Except as provided in 15 U.S.C. § 1692b, and without the prior consent of the
4 consumer given directly to the Defendant, and without the express permission
5 of a court of competent jurisdiction, and for a purpose not reasonably
6 necessary to effectuate a postjudgment judicial remedy, Defendant
7 communicated, in connection with the collection of a debt, with a person
8 other than the consumer, his attorney, a consumer reporting agency, the
9 creditor, the attorney of the creditor, or the attorney of Defendant.
10 Consequently, Defendant violated 15 U.S.C. § 1692c(b).

11 41. Because this violated certain portions of the federal Fair Debt Collection
12 Practices Act as these portions are incorporated by reference in the Rosenthal
13 Fair Debt Collection Practices Act, through California Civil Code § 1788.17,
14 this conduct or omission violated Cal. Civ. Code § 1788.17.

15 42. Through this conduct, Defendant communicated with the employer of
16 Plaintiff regarding the alleged debt when such a communication was not
17 necessary to the collection of the alleged debt, and when the attorney for
18 Plaintiff had not consented in writing to such communication. Consequently,
19 this conduct or omission violated Cal. Civ. Code § 1788.12(a).

20 43. When Plaintiff's receptionist and coworker relayed this information to
21 Plaintiff they questioned Plaintiff about her alleged debt.

22 44. During April 2011, Plaintiff's receptionist was so frustrated with LRLO's
23 continued calls that she spoke to Plaintiff's supervisor regarding the frequent
24 collection calls.

25 45. During one call in late April 2011, Plaintiff's supervisor spoke to LRLO
26 during a collection call.

27 46. Plaintiff's supervisor informed LRLO that these continued calls to the
28 workplace needed to stop.

1 47. Only after speaking with Plaintiff's supervisor, LRLO ceased calls to
2 Plaintiff's workplace.

3 48. Due to Defendants' actions, Plaintiff suffered actual damages in the form of
4 mental anguish which manifested in symptoms including but not limited to:
5 nervousness, stress, anxiety, loss of sleep, feelings of irritability,
6 embarrassment, frustration, all impacting Plaintiff's personal relationships.

7 **CAUSES OF ACTION**

8 **COUNT I**

9 **AS TO DEFENDANT LRLO**

10 **FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)**

11 **15 U.S.C. §§ 1692 ET SEQ.**

12 49. Plaintiff repeats, re-alleges, and incorporates by reference, all other
13 paragraphs.

14 50. The foregoing acts and omissions constitute numerous and multiple violations
15 of the FDCPA, including but not limited to each and every one of the above-
16 cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.

17 51. As a result of each and every violation of the FDCPA, Plaintiff is entitled to
18 any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in
19 an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and,
20 reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from
21 each and every defendant, jointly and severally.

22 **COUNT II**

23 **AS TO ALL NAMED DEFENDANTS**

24 **ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT (ROSENTHAL ACT)**

25 **CAL. CIV. CODE §§ 1788-1788.32**

26 52. Plaintiff repeats, re-alleges, and incorporates by reference, all other
27 paragraphs.
28

53. The foregoing acts and omissions constitute numerous and multiple violations of the Rosenthal Act, including but not limited to each and every one of the above-cited provisions of the Rosenthal Act, Cal. Civ. Code §§ 1788-1788.32

54. As a result of each and every violation of the Rosenthal Act, Plaintiff is entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or willful violation in the amount up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from each and every defendant, jointly and severally.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant LRLO, and Plaintiff be awarded damages from Defendant, as follows:

- An award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
- An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- An award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3);
- An award of actual damages pursuant to Cal. Civ. Code § 1788.30(a);
- An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b);
- An award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c).

WHEREFORE, Plaintiff prays that judgment be entered against Defendant Capital One and Plaintiff be awarded damages from Defendant, as follows:

- An award of actual damages pursuant to Cal. Civ. Code § 1788.30(a);
- An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b);

- An award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c).

TRIAL BY JURY

55. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiffs are entitled to, and demand, a trial by jury.

Respectfully submitted,

Hyde & Swigart

Date: April 9, 2012

By: s/ Andrea Darrow Smith

Email: andrea@westcoastlitigation.com

Attorneys for Plaintiff

HYDE & SWIGART
Riverside, California

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Melinda Ancrum

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Hyde & Swigart 4129 Main Street, Suite B8 Riverside, CA 92501
(951) 784-7770

DEFENDANTSLegal Recovery Law Offices, Inc.; Capital One Bank (USA)
N.A.

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

'12CV0880 W MDD**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|--|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. § 1692 et seq.

Brief description of cause:
Unfair Debt Collection Practices

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$**
75,001.00+

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

4/10/2012

s/Andrea Darrow Smith

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____